Mohamed Azwan bin Haji Ali v Sistem Televisyen (M) Bhd & Ors

HIGH COURT (KUALA LUMPUR) — SUMMONS NO S2(S3)-23-33 OF 1998
KAMALANATHAN RATNAM J
3 JULY 2000

Defamation *— Slander — Alleged remarks made against public personality — Words spoken in jest in light entertainment programme — Whether defamatory in its natural and ordinary meaning or carry any secondary meaning or innuendo — Whether remarks fair comment*

The plaintiff brought this action for libel against the defendants as the broadcaster, owner, the producer and maker of the defamatory statements in the programme called 'Melodi' aired by the first defendant. The fourth defendant in one of the segment of the programme had uttered 'kau ni nak jadi macam Azwan Alilah menangis sebab Ziana Zain kahwin!'. In his amended pleadings, the plaintiff claimed that the word 'menangis' gives the impression to the public that the plaintiff was 'hysterical' when Ziana Zain married and hence it was the use of the word 'menangis' that had allegedly caused the plaintiff embarrassment and humiliation.

Held, dismissing the claim:

(1) The plaintiff's contention that 'menangis' means that he was 'hysterical' (melalak) is totally unsupported by any evidence (see p 125H). The plaintiff had amended the pleadings and substituted the word 'melalak' to read 'menangis'. Whilst the fourth defendant had never used the word 'melalak' in the relevant segment of the 'Melodi' programme, the fact that the plaintiff had amended his pleadings to denote that the word used was 'menangis' and not 'melalak' ought to have indicated to the plaintiff that he ought not to have pursued with his arguments (see p 126B–C).

(2) Public personalities ought to accept the fact that their lives are not confined within the cloistered walls of their own hermitage. Public personalities must accept the 'buffets and blows' that come with fame (see pp 126I–127A). Since the programme 'Melodi' in itself is a light entertainment programme, the said words were words spoken in jest and therefore not defamatory of the plaintiff (see p 127D). When the plaintiff makes such a public announcement of his intention to propose marriage to someone, surely he must accept the fact that when the object of his desire had turned him down, he must be ready to accept public comment either in the press or on TV. Any matter brought before the public so as to invite public criticism on it may be commented upon (see p 128C–D).

(3) The whole statement was not defamatory when looked upon in its natural and ordinary meaning. The statements also did not carry any secondary meaning or innuendo because the whole statement was not derogatory and was not an attack upon the moral character of the plaintiff, nor did it attack the plaintiff in his professional capacity as an artiste (see p 127G).

[Bahasa Malaysia summary

Plaintif telah membawa tindakan libel ini terhadap defendan-defendan sebagai penyiar, pemilik, penerbit dan pembuat kenyataan fitnah di dalam rancangan yang dipanggil 'Melodi' yang disiarkan oleh defendan pertama. Defendan keempat di dalam salah satu segmen rancangan tersebut telah berkata 'kau ni nak jadi macam Azwan Alilah menangis sebab Ziana Zain kahwin!'. Di dalam pliding pindaannya, plaintif telah menuntut bahawa perkataan 'menangis' memberikan pandangan kepada orang awam bahawa plaintif diserang 'histeria' (melalak) apabila Ziana Zain berkahwin dan dengan itu penggunaan perkataan 'menangis' dikatakan telah menyebabkan plaintif berasa malu dan terhina.

Diputuskan, menolak tuntutan tersebut:

(1) Penegasan plaintif bahawa 'menangis' berrmaksud bahawa beliau diserang 'histeria' (melalak) tidak disokong oleh sebarang keterangan (lihat ms 125H). Plaintif telah meminda plidingnya dan menggantikan perkataaan 'melalak' untuk dibaca sebagai 'menangis'. Oleh kerana defendan keempat tidak pernah menggunakan perkataan 'melalak' di dalam segmen yang berkaitan di dalam rancangan 'Melodi', fakta bahawa plaintif telah meminda pliding-plidingnya untuk menunjukkan bahawa perkataan yang digunakan adalah 'menangis' dan bukan 'melalak' sepatutnya menunjukkan kepada plaintif bahawa beliau tidak patut meneruskan dengan hujahannya (lihat ms 126B–C).

(2) Personaliti awam sepatutnya menerima hakikat bahawa hidup mereka tidak disekat oleh sempadan yang mereka bina sendiri. Personaliti awam mestilah menerima kutukan dan kritikan yang seiring dengan kemasyhuran mereka (lihat ms 126I–127A). Oleh kerana rancangan 'Melodi' itu sendiri adalah rancangan hiburan ringan, perkataan-perkataan tersebut adalah diucapkan secara kelakar dan dengan itu tidak memfitnah plaintif (lihat ms 127D). Apabila plaintif membuat pengumuman awam tentang niatnya untuk melamar seseorang, beliau mestilah menerima hakikat bahawa apabila wanita idamannya enggan menerima, beliau mestilah bersedia untuk menerima komen awam sama ada di dalam akhbar atau TV. Sebarang perkara yang dikemukakan kepada orang awam sehinggakan mengundang kritikan awam boleh diberikan komen (lihat ms 128C–D).

(3) Keseluruhan kenyataan tersebut bukanlah fitnah apabila melihat maksudnya yang semulajadi dan biasa. Kenyataan-kenyataan tersebut juga tidak membawa sebarang maksud sekunder atau sindiran oleh kerana kenyataan secara menyeluruh bukanlah menghina dan bukanlah serangan ke atas sifat moral plaintif, atau menyerang plaintif di dalam kapisiti profesionalnya sebagai seorang artis (lihat ms 127G).]

Notes

For cases on slander generally, see 12 *Mallal's Digest* (4th Ed, 2000 Reissue) paras 386–394.

Cases referred to

Abdul Karim bin Ayob v Kumpulan Karangkraf Sdn Bhd & Ors [2000] 1 MLJ 243 (refd)

Chok Foo Choo @ Chok Kee Lian v The China Press Bhd [1999] 1 MLJ 371 (refd)

Glass v Perl [1929] TPD 264 (refd)

Payne v Sheffield [1882] 2 EDC 166 (refd)

Ratus Mesra Sdn Bhd v Shaik Osman Majid & Ors [1999] 3 MLJ 529 (refd)

Warren v Green [1958] DLR 255 (refd)

Willows v Williams [1951] 2 WWR (NS) 657 (refd)

John Clark Sumugod (*Low Beng Choo* with him) (*Sidek Teoh Wong & Dennis*) for the plaintiff.

Looi Pek Hong (*PH Looi & Co*) for the first, second and third defendants.

Hermes Ibrahim (*Iszam Kamal bin Ismail* and *Harriri bin Mohd Noor*) with him) (*Iszam Kamal & Harriri*) for the fourth defendant.

Kamalanathan Ratnam J:

Facts

The plaintiff is a well-known television personality, television compere, composer, producer, actor, singer and script writer and is known throughout Malaysia, Singapore and Brunei and has been involved in the entertainment industry for the last 11 years. He had previously won the prestigious award for the Most Popular Male Personality Award in 'Anugerah TV3 1994'. He is also a businessman and has a company called Azwan Ali Production Sdn Bhd where he is the Managing Director. He had worked for the first defendant from 1988 to 1996 and was involved in many of the first defendant's programmes such as 'Muzik Muzik', 'Lontong', 'Sambal', 'Skrin' and 'Juara Lagu 96' and was also a former host of the programme 'Melodi'. Whilst in the employment of the first defendant, he had also worked as a Deputy Producer for the second defendant. The plaintiff is presently with Astro and had produced the programme called 'Chit Chat Azwan' which was voted as the 3rd Best Asian Programme in the Asian TV Awards 1999.

Case for the plaintiff

The plaintiff brought this action for libel against the defendants as the broadcaster, owner, the producer and maker of the defamatory statements respectively in the programme called 'Melodi' aired by the first defendant on its commercial television channel called 'TV3' on 10 and 17 May 1998. The plaintiff claims that the fourth defendant had, in a segment of the programme 'Melodi' aired by the first defendant on 10 May 1998, uttered the following defamatory words in respect of the plaintiff:

Ogy (fourth defendant):	Eh ... Ah Pek! Yang kau menangis-nangis ni kenapa?
Ah Pek:	(Meruang) ('Hysterical') Ai ya ... Gua punya giplen ('girlfriend') sudah kahwin ...
Ogy (4th defendant):	Ooo ... kau ni nak jadi macam Azwan Ali-lah menangis sebab Ziana Zain kahwin!

The plaintiff claims that the defendants' attempted apology to him in the programme 'Melodi' aired by TV3 on 17 May 1998 was also defamatory of the plaintiff and was made without his prior notice or consent, was insincere and had further ridiculed and humiliated him. The plaintiff claims that the programme 'Melodi' aired by TV3 on 17 May 1998 was performed by the fourth defendant and a character known as Ah Pek in a mourning mood, wearing dark coloured clothings and after saying the words 'mintak maaf', the fourth defendant and Ah Pek were seen by viewers, jumping with joy. The plaintiff also claims that the programme 'Melodi' aired by TV3 on 17 May 1998 when the fourth defendant said the following words in a joking manner, further ridiculed and humiliated him:

Ha ... Michael ... Jangan saman I.

The plaintiff claims that the words 'mintak maaf' were uttered jokingly throughout the said programme and repeated at least seven times without any further explanation or showing any relevance to the defendants' intention of making a public apology to the plaintiff. It was the plaintiff's case that the said programme viewed as a whole showed the insincerity of the defendants and their intention to further ridicule and belittle him.

The plaintiff further contended that the circumstances of the apology and the words 'mintak maaf' repeated several times and 'jangan saman I', portrayed the plaintiff as being highly sensitive, unreasonable and made the plaintiff a laughing stock before the viewers. The plaintiff also claimed that after he left the employment of the first and second defendants, the first and second defendants' management then became vindictive and vengeful towards him.

Findings of the court

The plaintiff testified that he was never romantically involved with an actress called Ziana Zain and that they were mere friends and fellow artistes. The plaintiff also testified that he had never cried because Ziana Zain was married and it is also in evidence that the fourth defendant had admitted

having no knowledge as to whether the plaintiff had cried or not, upon Ziana Zain getting married. The plaintiff called two witnesses on his behalf, one of whom was his own sister, Norlia bte Haji Ali. It was pointed out by the defence that this witness was seated in court throughout the plaintiff's evidence. This witness however admitted under cross-examination to having heard gossip and rumours between the plaintiff and Ziana Zain. Under strenuous cross-examination she admitted knowing that her brother liked Ziana Zain but not to the extent of being in love with her. She also agreed that the programme 'Melodi' was a light entertainment programme. The next witness for the plaintiff was Hamidon bin Md Said. He too had been sitting in court throughout the plaintiff's evidence. He testified that he is a long time close friend of the plaintiff. This close friend of the plaintiff testified that the segment of the programme 'Melodi' that indicated that the plaintiff had cried over the marriage of Ziana Zain to another, imputed that the plaintiff coverts and harbours feelings towards a married woman and thus it depicted the plaintiff as being immoral in the eyes of his religion. Before I proceed further I must point out that the issue of religion being a sensitive one, it is totally inappropriate for the plaintiff to bring his religion into this case to support his stand. Even assuming the plaintiff had indeed cried when Ziana Zain married another, it can be taken as the natural outpouring of someone shedding tears to appease his unrequited love. How then can it be said that the plaintiff was coveting another's wife. The plaintiff is entitled to shut his heart and mind off from thinking of his unrequited love. I am firmly of the view that it is time parties do not drag their respective religions into conflict to suit their own ends and the success of their case, as if to say 'it has hurt not me, but my religion'. Religion is as ancient as existence itself. It is totally improper to give an interpretation that suits one's case and to contend that one's religion supports that interpretation.

To my mind this is a simple case. The fourth defendant is a talented artiste, presenter, entertainer, director, producer, television and film actress, television personality, and singer and is well known throughout Malaysia. From the age of 11 until 37 years old, she has won many prestigious local and international awards inter alia the Most Talented Young Actress Award at the South East Asia Film Festival, 'Anugerah Bintang Harapan' in Festival Film Malaysia, Best Actress Award at Festival Film Malaysia in 1986 and 1987, 'Pelakon Film Wanita Popular 1986', and has been voted by the public as 'Artis Serba Boleh' in 1999 by Majalah Media Hiburan, and being awarded the 'Anugerah Skrin Bintang Popular' in 1998 as being the Most Popular and Sensational Presenter. The fourth defendant has more than ten years' experience as a presenter and is well known for her creativity and ad libbing. This is acknowledged and confirmed by the plaintiff, the first defendant, second defendant and the third defendant. As a person the fourth defendant is known to be a jovial person who likes to make jokes in any light entertainment shows that she conducts so as to liven up the said programme.

The first and second defendants have employed the fourth defendant since 1992 as a presenter to host a local light entertainment programme

A called 'Melodi'. On the instructions of the first, second and third defendants, the programme 'Melodi' was shown live on television for the first time on Sunday, 10 May 1998 and then on 17 May 1998 in which the two episodes containing the segments which are allegedly defamatory of the plaintiff, were reported to have been said.

B I had the benefit of viewing the programme 'Melodi' aired on 10 May 1998, in court. The entire script as recorded verbatim is reproduced herewith:

Ogy (fourth defendant):	Ni kenapa menangis?
Ah Pek:	(menangis) Gua punya giplen (girlfriend) bukan yang ini dua orang (referred to handing pictures) itu bini ... ini giplen (girlfriend) sudah kahwin ini hari!
Ogy (fourth defendant):	Tiga bini pun ada girlfriend lagi ka? Siapa ... siapa? Cerita?!
Ah Pek:	Ini ha! (shows a card)
Ogy (fourth defendant):	Eh Ah Pek, biar betul! Ini Siti Ruziana bte Zain! Ehh, Ah Pek dah kena 'speedo' ini Ah Pek! Ini kad bohong ni Ah Pek. Dua puluh Ringgit orang buat sekarang!
Ah Pek:	Klon ke? Klon ke? Gua kena tipu lah?!
Ogy (fourth defendant):	Kenapa ni menangis-nangis, Ziana Zain yang kahwin?
Ogy (fourth defendant):	... Kau ni pun jadi macam Azwan Ali-lah ... Ziana Zain kahwin kau orang menangis! Kenapa aku kahwin kau orang tak nangis?!'

F In his amended pleadings the plaintiff claims that the word 'menangis' gives the impression to the public that the plaintiff was 'hysterical' when Ziana Zain married. It is obvious therefore that it was the use of the word 'menangis' that is alleged to have caused the plaintiff embarrassment and humiliation. To the ordinary man in the street the word 'menangis' means 'crying'; that is the natural and ordinary meaning that ought to be given to G 'menangis' and as I said earlier it is perfectly normal and natural for anyone, be he a male or a female, to shed tears upon losing his/her loved one to another. In *Abdul Karim bin Ayob v Kumpulan Karangkraf Sdn Bhd & Ors* [2000] 1 MLJ 243, I said at p 247 as follows:

> ... To my mind, the meaning that ought to be attributed to the word 'miang' H is not what a professor of languages ensconced in his air-conditioned room, thinks it means, but what the ordinary man in the street would think it means.

The plaintiff's contention that 'menangis' means that he was 'hysterical' ('melalak') is totally unsupported by any evidence. He has failed to prove that the word 'menangis' may also have a secondary meaning or any extended meaning which no doubt would depend upon knowledge of I special or extrinsic facts. This secondary meaning, known as an innuendo, has not been proven. The evidence of the plaintiff's two witnesses on this score must be literally taken with the proverbial pinch of salt. Both are

partial witnesses and their demeanour in court totally belied their impartiality. The confrontational manner in which they testified under cross-examination clearly showed that their presence in court throughout the entire evidence of the plaintiff was sufficient to tailor their evidence to suit the plaintiff's testimony.

At this juncture it is necessary to point out that the plaintiff had amended the pleadings and substituted the word 'melalak' to read 'menangis'. Whilst the fourth defendant had never used the word 'melalak' in the relevant segment of the 'Melodi' programme, the fact that the plaintiff had amended his pleadings to denote that the word used was 'menangis' and not 'melalak' ought to have indicated to the plaintiff that he ought not to have pursued with his arguments that the fourth defendant had contended that he was hysterical on knowing of the marriage of Ziana Zain to another. Numerous press statements had been attributed to the plaintiff (see documents in the common agreed bundle of documents — CABD) wherein he had said he was humiliated because it was said by the defendants that he was hysterical. To my mind the plaintiff is the author of his own misfortune. The plaintiff read too much into a simple light entertainment. The basis for the light entertainment was the existence of the gossip and rumour (not denied by the plaintiff and his witnesses) that there was a romantic liaison between the plaintiff and Ziana Zain.

Having viewed the impugned segment of 'Melodi' I find that the character called Ah Pek was crying when he was approached by the fourth defendant. That was the reason why the fourth defendant asked Ah Pek with the pertinent two questions:

(i) 'Ni kenapa menangis?; and

(ii) 'Kenapa menangis-nangis Ziana Zain kahwin?

At this stage it is relevant to point out that the fourth defendant's ability to ad lib was accepted as a fact. Having heard the evidence of the fourth defendant and having watched her demeanour and deportment, I find that when she followed, after asking the above two questions (which were in the script), with:

> Kau ni pun jadi macam Azwan Ali-lah ... Ziana Zain kahwin kau orang menangis! Kenapa aku kahwin kau orang tak nangis?!

that the above statement was ad libbed by the fourth defendant in jest, suggestive of the light entertainment provided by the programme 'Melodi', which poked fun at the local artistes. The word 'kau orang' was meant to embrace many admirers of Ziana Zain including the plaintiff who on his own admission was an admirer of Ziana Zain. The word 'kau orang' connotes a simplified meaning. It means, you all, namely, 'you men in general! Ziana Zain marries and you men cry!! like Azwan Ali !! ...' To my mind if this statement can be construed as being defamatory, then men and women in the public eye who display their life-style and personalities to public scrutiny will be lining up before this court with suits in defamation notwithstanding the fact that as public personalities they ought to accept the fact that their lives are no longer to be confined within the cloistered walls

of their own hermitage. As public personalities they must accept the 'buffets and blows' that come with fame. The critical comments that they face must be accepted with equal composure, as the accolades that they love so much to hear. In *Warren v Green* [1958] DLR 255 Cairns J referred to the speech of Egbert J in *Willows v Williams* [1951] 2 WWR (NS) 657 at p 659 wherein his Lordship said:

> Words which are on their face obviously defamatory may not be so because of the circumstances under which they are published. For example, they may be *spoken in jest, and so understood by any one who hears them.* (Emphasis added.)

It is pertinent to refer to the words of Solomon J in *Glass v Perl* [1929] TPD 264:

> When words which on the face of them are defamatory, are spoken in obvious jest, the person uttering them is not liable.

It is my judgment therefore that since the programme 'Melodi' in itself is a light entertainment programme as admitted by the plaintiff's own witness, then the said words as are alleged to be defamatory as uttered by the fourth defendant, are to my mind, words spoken in jest and therefore, not defamatory of the plaintiff. As said by the court of Appeal in *Chok Foo Choo @ Chok Kee Lian v The China Press Bhd* [1999] 1 MLJ 371 at p 374:

> It cannot, I think, be doubted that the first task of a court in an action for defamation is to determine whether the words complained of are capable of bearing a defamatory meaning. And it is beyond argument that this is in essence a question of law that turns upon the construction of the words published.

As I said in *Ratus Mesra Sdn Bhd v Shaik Osman Majid & Ors* [1999] 3 MLJ 529:

> ... the test to be applied when considering whether a statement is defamatory of a plaintiff is an objective one in that it must be given a meaning in which a reasonable man would understand it and that for this purpose ... it is necessary to consider the whole article.

It is my judgment that the whole statement is not defamatory when looked upon in its natural and ordinary meaning. The statements also do not carry any secondary meaning or innuendo because the whole statement is not derogatory and is not an attack upon the moral character of the plaintiff, nor does it attack the plaintiff in his professional capacity as an artiste. In fact the plaintiff testified that he is presently involved in the production of a programme called 'Chit Chat Azwan' which was voted as the 3rd Best Asian Programme. This to my mind is a clear indication that the plaintiff's name and credibility as an artiste has never been tarnished nor tainted by the statements made by the fourth defendant in the programme 'Melodi'. It therefore does not behove the plaintiff to contend that he is shunned or avoided by the public or is exposed to hatred, ridicule or contempt since the plaintiff is still accepted by the viewers and the public as an accredited artiste.

In the documents contained in the CABD, which were admitted without dispute as to their authenticity and contents, the defendants exhibited an article which reads 'Azwan Ali Pinang Ziana RM60 Ribu?' This meant that the plaintiff was prepared to offer as dowry a sum of RM60,000 to Ziana to propose marriage to her. The plaintiff not only did not deny this but admitted this document into the CABD without dispute. This clearly puts paid to the plaintiff's cry of innocence and denial of any amorous feelings towards Ziana Zain. To my mind the defence of fair comment raised by the fourth defendant is well and truly taken. The plaintiff is attributed to have said in 1 CABD 2 as follows:

Lepas ini, kalau aku ada duit, aku nak pinang Ziana terus.

This suggestion that if he had the money he would propose to Ziana and not denied by the plaintiff, as having been made by him, clearly suggests that the plaintiff, being a celebrity in his own way, had invited public comment, on the words attributed to the fourth defendant. When the plaintiff, and being in the public eye, makes such a public announcement of his intention to propose marriage to someone, surely he must accept the fact that when the object of his desire had turned him down by marrying another, he must be ready to accept public comment either in the press or on TV. Any matter brought before the public so as to invite public criticism on it may be commented upon (per Barry JP in *Payne v Sheffield* [1882] 2 EDC 166). In this case the plaintiff clearly invited public comment by his own admitted desire to propose to Ziana Zain. I have no hesitation in holding that the plaintiff has failed to prove his case against the fourth defendant. Since the sub-stratum of the case falls with the dismissal of the case against the fourth defendant with costs, it is my judgment that the case therefore also stands dismissed against all other defendants with costs.

Since I have found that the statements were not defamatory, there is no necessity for me to consider the question of an apology and its effectiveness.

Claim dismissed.

Reported by Benjamin Yong